Exhibit 1 to Declaration of Julia A. Olson

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; et al.

Plaintiffs,

v.

The UNITED STATES OF AMERICA; **DONALD TRUMP**, in his official capacity as President of the United States; et al.,

Federal Defendants.

Case No.: 6:15-cv-01517-TC

PLAINTIFFS' (DRAFT) MOTION FOR SANCTIONS
Pursuant to Fed. R. Civ. P. 11(c)
Request for Oral Argument

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(DRAFT) MOTION

Plaintiffs hereby move for sanctions against Intervenor Defendants and their counsel pursuant to Federal Rule of Civil Procedure 11(c). Pursuant to Local Rule 7-1(a), the undersigned hereby certify that a good faith effort was made to confer with counsel for Intervenor Defendants on this Motion. Counsel for Plaintiffs served a draft of this Motion, along with all supporting papers, upon Intervenor Defendants, through their counsel, on February 15, 2017, which is not less than 21 days prior to the filing of this Motion with the Court. Per counsel's commitment at the February 7, 2017 Rule 16 conference, counsel for Plaintiffs have also provided Intervenor Defendants with a complete compilation of the allegations of fact admitted by the Federal Defendants in their answer to Plaintiffs' First Amended Complaint ("FAC"). In addition, Counsel for Plaintiffs, including the undersigned, thereafter made a good faith effort to resolve the issues addressed in this Motion and the supporting papers with counsel for Intervenor Defendants. Since service on Intervenor Defendants of the draft Motion and all supporting papers, counsel for Intervenor Defendants and Intervenor Defendants have refused to withdraw or appropriately correct their answer to the FAC, upon which the violations of Rule 11 noticed thereby and addressed herein are based; accordingly, this Motion is timely. Fed. R. Civ. P. 11(c)(2); *Truesdell v. Southern California Permanente Medical Group*, 293 F.3d 1146, 1153 (9th Cir. 2002). This Motion is supported and based upon the supporting memorandum included herein, the attached Declaration of Julia A. Olson, the documents on file with the Court, and such further evidence and argument as the Court may permit.

Plaintiffs hereby move for and request an order imposing the following sanctions against Intervenor Defendants and their counsel: (1) Plaintiffs' attorneys' fees and costs be awarded Plaintiffs for their counsel's time spent responding to Intervenor Defendants frivolous answer to the FAC, including time spent in connection with this Motion; and that (2) the following paragraphs, or portions thereof, of Plaintiffs' First Amended Complaint (FAC) be deemed admitted by Intervenor Defendants: Paragraphs 2, 3 (first two sentences), 131 (first sentence), 132 (second sentence) 133, 134 (first sentence), 135, 136, 140, 141 (first and fourth sentences), 142, 143 (first sentence), 145 (second and fifth sentences), 150 (second sentence), 202 (second sentence), 205, 206 (first and third sentences), 208 (first sentence), 210 (third sentence), 211 (third sentence), 215, 216 (second sentence), 217 (first and second sentences), 224 (first sentence), 228 (first sentence), 230 (first clause of second sentence), 231 (third sentence), 245 (first sentence), 246 (first three sentences), and 247 (first sentence).

SUPPORTING MEMORANDUM

I. INTRODUCTION

After moving to intervene, and then spending nearly 15 months briefing motions to dismiss, which were completely denied on November 10, 2016, Intervenor Defendants were required to answer Plaintiffs' First Amended Complaint ("FAC") by November 28, 2016. Upon Intervenor Defendants' motion, the Court granted an extension of time to answer to December 15, 2016, so that Intervenor Defendants could address "complicated allegations" in Plaintiffs' FAC. ECF 87. In advocating for their requested extension of time, counsel for Intervenor Defendants[1] represented to this Court:

> This is an extraordinarily long complaint with a number of very detailed allegations going back almost over the last -- well, for more than a century, and it does take some time to respond to those allegations in a thoughtful manner and to compile all the information necessary to answer them.

November 28, 2016 Transcript, ECF 100, 5:1-6.

Counsel for the Federal Defendants' similarly argued that:

> Answering the complaint in this case is a very significant undertaking. There are hundreds of complex factual allegations in the complaint, and we need to locate the relevant experts within the federal agency who can provide responses to those allegations. As the intervenors state, the complaint challenges more than half of a century of Executive Branch activity.
>
> If we rush to produce an answer on an unrealistic time frame, we are not going to be able to find an answer to the allegations and will likely need to respond by neither confirming nor denying the allegations where we could otherwise make an inquiry and determine whether we would confirm or deny.

November 28, 2016 Transcript, ECF 100, 6:1-13.

[1] This memorandum refers to both Sidley Austin LLP and Miller Nash Graham & Dunn LLP, collectively, as "counsel for Intervenor Defendants" and "Intervenor Defendants' counsel. Where actions, conduct, or statements described herein are attributable to either Sidley Austin LLP or Miller Nash Graham & Dunn LLP individually, this Memorandum indicates accordingly by specific reference.

At the hearing on the requested extensions by both sets of Defendants, this Court stated and Plaintiffs' counsel conceded:

> THE COURT: Well, what about counsel's point that you may get a more vague answer if they don't have enough time to canvas the appropriate personnel to directly answer the allegations in the complaint? You may end up with something like we don't have enough information to either confirm or deny and -- as part of their answer.
>
> So aren't you better served by giving the government adequate time to file a more specific answer to all the allegations in the complaint?
>
> MS. OLSON: Yes, Your Honor. Plaintiffs will be better served if the answers are thorough and not just a simple deny because we don't have enough information.

November 28, 2016 Transcript, ECF 100, 7:12-23.

Yet, notwithstanding having been granted their requested extension to answer, counsel for Intervenor Defendants filed an answer that claimed lack of sufficient information or knowledge to admit or deny 198 paragraphs containing factual allegations in the FAC, accounting for over 75% of Plaintiffs' factual allegations.[2] ECF 93. As Judge Coffin stated at the Rule 16 Scheduling conference on February 7, 2017: "The Intervenors' answer, on the other hand – basically the mantra of Intervenors' answer is e don't know, and on that basis we deny. We don't know what's going on. We don't know if it's climate change or not. We don't know if it's human induced or not." February 7, 2017 Transcript, 15: 1-5. Intervenor Defendants frivolously repeat the refrain of lack of sufficient information or knowledge to admit or deny, and therefore deny, many allegations of fact that: (1) are based on federal government statements in publicly available documents that can be uncovered by a simple Google search; (2) have been long known, and previously admitted, by these Intervenor Defendants and/or their members; and (3) could be admitted with slight alterations in the averments, as the Federal Defendants did in their answer.

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[2] Out of 259 paragraphs in the FAC containing factual allegations, Intervenor Defendants admit only 47 partial or complete paragraphs. They specifically deny only 14 paragraphs. ECF 93.

This Motion for Sanctions is based on a fundamental premise: Where a party claims a "lack of sufficient knowledge or information to form a belief as to the truth of allegations" that are "obviously within its knowledge or belief," such claims should have the effect of an admission of the relevant allegations. *Wachovia Bank, N.A.* v. *Chaparral Contracting, Inc.*, No. 20:09-CV-00164, 2010 WL 2803016 at *1-2 (D. Nev. July 12, 2010) (citing *Harvey Aluminum (Inc.) v. N.L.R.B.*, 335 F.2d 749, 757 (9th Cir. 1964)).

Under Rule 11, counsel must "certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact." *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 393 (1990) (An attorney's pre-filing inquiry must be reasonable under the circumstances). Given the requested extension of time to answer, and their obligations under Rule 11, Intervenor Defendants and their counsel should be sanctioned for failing to conduct a reasonable and competent inquiry before signing and filing their answer to Plaintiffs' FAC. Plaintiffs request an order that: (1) attorneys' fees and costs be awarded Plaintiffs for their counsel's time spent responding to Intervenor Defendants' frivolous answer; and (2) the following paragraphs, or portions thereof, of the FAC be deemed admitted by Intervenor Defendants: Paragraphs 2, 3 (first two sentences), 131 (first sentence), 132 (second sentence) 133, 134 (first sentence), 135, 136, 140, 141 (first and fourth sentences), 142, 143 (first sentence), 145 (second and fifth sentences), 150 (second sentence), 202 (second sentence), 205, 206 (first and third sentences), 208 (first sentence), 210 (third sentence), 211 (third sentence), 215, 216 (second sentence), 217 (first and second sentences), 224 (first sentence), 228 (first sentence), 230 (first clause of second sentence), 231 (third sentence), 245 (first sentence), 246 (first three sentences), and 247 (first sentence).

II. ARGUMENT

A. Rule 11 Permits Sanctions for a Frivolous Pleading

Rule 11 permits courts to sanction attorneys or parties who submit pleadings for an improper purpose or that contain frivolous arguments or arguments that have no evidentiary support. Fed. R. Civ. P. 11(b) and (c). Rule 11(b) states in relevant part:

> By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b).

Sanctions under Rule 11 are appropriate when a pleading contains frivolous or unsupported allegations or is brought for improper purposes. *See Cooter & Gell,* 496 U.S. at 390, 397-398 (Holding district court retains jurisdiction to award Rule 11 sanctions after a frivolous complaint is voluntarily dismissed); partially superseded by statute as explained by *De La Fuente v. DCI Telecomms., Inc., et al.*, 259 F.Supp.2d 250, 257 n.4 (S.D.N.Y. 1993) (Noting the 1993 amendment added Rule 11(c) "safe harbor" provision); *see also Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002).

In evaluating a Rule 11 challenge, the court conducts a two-prong inquiry as to: (1) whether the pleading is factually or legally baseless from an objective perspective; and (2) whether counsel for the party conducted a "reasonable and competent inquiry" before signing and filing the pleading. *Holgate v. Baldwin*, 425 F.3d 671, 676-678 (9th Cir. 2005). In evaluating Rule 11 challenges, courts are guided by the central purpose of Rule 11 "to deter baseless filings in district court" and to enforce the "duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact." *Cooter & Gell,* 496 U.S. at 393. An attorney's pre-filing inquiry must be reasonable under all the circumstances of the case. *Id.* at 401.

Courts consider both the time available for a pre-filing inquiry and the source of pre-filing information to be important circumstances in determining the reasonableness of an attorney's pre-filing inquiry. *See, e.g.*, *Lloyd v. Schlag*, 884 F.2d 409, 412-413 (9th Cir. 1989); *Divane v. Krull Elec. Co., Inc.*, 200 F.3d 1020, 1028 (6th Cir. 1999); *Kopalow & Girisgen v. Payroll Solutions*, No. 2:06-CV-00487-RCJ-(GWF), 2006 WL 2583226, at *7 (D. Nevada Sept. 6, 2006). As to the issue of time available, an inquiry that is reasonable when an attorney has only a few days to file a pleading may be unreasonable when she has months. *Cooter & Gell,* 496 U.S. at 401-02. Regarding the source of pre-filing information, where publicly available information, including information available by internet search and documents available through government websites, undermines a submission's contentions, a finding of failure to conduct a reasonable inquiry is supported. *Song FI, Inc. v. Google, Inc.*, No. C 14-5080 CW, 2016 WL 4180214 at *2 (N.D. Cal. Aug. 8, 2016) (Publicly-available "online news article" contradicting plaintiff's contentions demonstrated that plaintiff's counsel could not have undertaken an objectively reasonable inquiry); *Ruth v. Unifund CCR Partners*, 604 F.3d 908, 911-12, 913 (6th Cir. 2010) (Rule 11 reasonable inquiry rule requires consultation of publicly available records online); *Jones v. Zimmer*, No 2:12-cv-01578-JAD-NJK, 2014 WL 6772916 at *6 (D. Nev. Dec. 2, 2014) (Defendants' response to request for admission that it lacked sufficient knowledge as to whether a statement was not specifically prohibited by inmate disciplinary policy was belied by availability of policy on government website, demonstrating failure to conduct a reasonable inquiry).

This Court must consider "factual questions regarding the nature of the attorney's pre-filing inquiry and the factual basis of the pleading." *Cooter & Gell*, 496 U.S. at 399. Indeed, Rule 11 requires that all factual contentions in a signed answer have "evidentiary support." Fed. R. Civ. P. 11(b)(3); *see Truesdell v. S. Cal. Permanente Medical Group, et al.*, 293 F.3d 1146, 1153-54 (9th Cir. 2002) (Imposing sanctions where allegations and factual contentions in plaintiff's pleading "lacked 'evidentiary support' and stated allegations 'upon information and belief' that Plaintiff's counsel must have known were false."); *Herships v. Maher*, No. C-97-3114, 1998 WL 164943, at *2 (N.D. Cal. Mar. 10, 1998) (Rule 11 imposes "an affirmative duty to conduct a reasonable inquiry into the facts and the law *before filing*") (emphasis in original).

When an attorney signs and files a pleading without first conducting a reasonable investigation, sanctions are appropriate. *Business Guides, Inc. v. Chromatic Commc'ns Enters, Inc.,* 498 U.S. 533, 541 (1991).

B. Counsel for Intervenor Defendants Violated Rule 11

Under Rule 11(b), the required signature of counsel certifies as to crucial representations: "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law"; and "the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information." Fed. R. Civ. P. 11(b)(2), (4). Counsel for Intervenor Defendants, violated Rule 11 by filing an answer with numerous objectively factually baseless denials, claiming "lack of sufficient information and knowledge." A reasonable and competent inquiry by counsel would have revealed that various allegations in the FAC are based on statements made by representatives of the federal government in publicly available documents. A reasonable and competent inquiry would have revealed facts and information long known, and previously admitted, by Intervenor Defendants and their members on several material allegations in the FAC, which would have supported admissions and/or denials. A reasonable and competent inquiry would have revealed Intervenor Defendants had sufficient information and knowledge to admit portions of the FAC's factual allegations with slight alterations in the averments, as Federal Defendants did in their answer. The repetitious, baseless assertions of "lack of sufficient information and knowledge" in the answer, after being given an extension of time "to canvas the appropriate personnel to directly answer the allegations in the complaint,"[3] combined with the lack of a reasonable and competent inquiry by counsel before filing the answer, constitutes a violation of Rule 11. *See Ruth*, 604 F.3d at 911 ("The requirement that parties have a good-faith basis for their pleadings applies to answers every bit as much as it does to counterclaims.").

1. Intervenor Defendants' Counsel Failed to Reasonably and Competently Inquire into Statements in Publicly Available Documents Cited in the FAC

Where factual information is readily available or should otherwise be known to a party, that party's assertion of lack of knowledge or information as to its veracity, or denial thereof, is evidence of a failure to conduct a reasonable and competent inquiry. *See Wachovia Bank, N.A.* v. *Chaparral Contracting, Inc.*, No. 20:09-CV-00164, 2010 WL 2803016 (D. Nevada July 12, 2010) (Defendants' claim of lack of knowledge or information as to allegations regarding its own business loans showed failure to conduct a reasonable inquiry); *Bay State Towing Co., v. Barge American 21*, 899 F.2d 129, 132 (1st Cir. 1990) (Lack of effort to check whether weather was foggy on a specific day established failure to conduct a reasonable inquiry). The ready availability of internet resources tending to undermine a party's contentions demonstrates a failure to conduct a reasonable search. *See Song FI, Inc., supra,* 2016 WL 4180214 at *2 ("online news article" contradicting claims demonstrated lack of objectively reasonable inquiry); *Ruth*, 604 F.3d at 911-12, 913 (Rule 11 requires a party to consult publicly available online records).

Paragraphs 2, 3, 132-136, 140-43, 145, and 246 of the FAC quote from, and allege factual statements based on the content of, publicly available documents. To ascertain the truth of these averments only requires an inquiry on a search engine, such as Google, of the documents cited in these paragraphs. Despite the availability of these documents and ample time to review them, Intervenor Defendants consistently asserted "lack of sufficient knowledge or information to admit or deny the factual allegations" regarding their content, ECF 93 ¶¶ 2 (first sentence), 132-136, 140-43, 145 (second sentence), and 246. The availability of these materials, coupled with the extension of time granted Intervenor Defendants to prepare their answer, demonstrates a clear failure to perform a "reasonable and competent inquiry" in violation of Rule 11. *Holgate*, 425 F.3d at 676.

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[3] November 28, 2016 Transcript 7:12-23.

Paragraph 2,[4] the second sentence of Paragraph 132,[5] Paragraph 133,[6] the first sentence of Paragraph 134,[7] and Paragraph 135[8] of the FAC are quotations from, and factual assertions regarding, the content of the 1965 Report of President Johnson's Scientific Advisors, "Restoring the Quality of Our Environment." Intervenor Defendants claim to "lack sufficient knowledge to admit or deny" each of these factual allegations. ECF 93 ¶¶ 2 (first sentence), 132-135. However, a simple Google search of "Restoring the Quality of Our Environment" lists a link to that Report[9] as the top search result.[10]

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[4] Paragraph 2 of the FAC states: "In a 1965 White House Report on 'Restoring the Quality of Our Environment'…the President's Science Advisory Committee stated: 'The land, water, air and living things of the United States are a heritage of the whole nation. They need to be protected for the benefit of all Americans, both now and in the future. The continued strength and welfare of our nation depend on the quantity and quality of our resources and on the quality of the environment in which our people live.'"

[5] The second sentence of Paragraph 132 of the FAC states: "In the 1965 Report of President Lyndon Johnson's Scientific Advisors, 'Restoring the Quality of Our Environment,' the White House confirmed that anthropogenic pollutants, including CO_2, threaten 'the health, longevity, livelihood, recreation, cleanliness and happiness of citizens who have no direct stake in their production, but cannot escape their influence."

[6] Paragraph 133 of the FAC, referring to "Restoring the Quality of Our Environment," states: "For fifty years, the Executive Branch has known that 'pollutants have altered on a global scale the CO_2 content of the air' through 'the burning of coal, oil and natural gas.' The Executive Branch predicted that CO_2 'will modify the heat balance of the atmosphere to such an extent that marked changes in climate, not controllable th[r]ough local or even national efforts, could occur.' The Executive Branch warned that 'carbon dioxide [gases] are accumulating in such large quantities that they may eventually produce marked climatic change.'"

[7] The first sentence of Paragraph 134, also referring to "Restoring the Quality of Our Environment," states: "Fifty years ago, the Executive Branch described the marked climatic changes from CO_2 pollution as including the melting of the Antarctic icecap, rising sea levels, warming oceans, acidifying waters, and additional releasing of CO_2 and methane due to the events."

[8] Paragraph 135 of the FAC, referring to "Restoring the Quality of Our Environment," states: "Fifty years ago, the White House recommended that a tax system be implemented to tax polluters, including air pollution, 'in proportion to their contribution to pollution' to incentivize pollution reduction."

Similarly, Paragraph 136[11] of the FAC consists of a quotation from, and factual assertions regarding, the content of a 1969 letter from then-Advisor to President Nixon, Daniel Patrick Moynihan, to White House Counsel John Erlichman. Intervenor Defendants claim to "lack sufficient knowledge to admit or deny" these factual allegations, ECF 93 ¶ 136, yet a simple Google search of the "1969 Moynihan Letter to Erlichman" lists a link to the relevant document,[12] maintained by the Nixon Library, as the top search result.[13]

Similarly, the first two sentences of Paragraph 3,[14] Paragraph 140,[15] and the first and fourth sentences of Paragraph 141[16] of the FAC set forth statements regarding the 1990 EPA report to Congress, "Policy Options for Stabilizing Global Climate." A Google search of the document lists a link to the report,[17] maintained by the EPA, as the first search result.[18] Yet Intervenor Defendants claim to "lack of sufficient knowledge to admit or deny" the averments regarding the document's contents. ECF 93 at ¶¶ 140, 141.

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[9] *See* Donald F. Horning, et al., President's Science Advisory Committee, "Restoring the Quality of Our Environment" (1965), *available at* https://dge.carnegiescience.edu/labs/caldeiralab/Caldeira%20downloads/PSAC,%201965,%20Restoring%20the%20Quality%20of%20Our%20Environment.pdf.

[10] *See* Google search results for "Restoring the Quality of Our Environment," https://www.google.com/?gws_rd=ssl#q=restoring+the+quality+of+our+environment (last visited Feb. 3, 2017).

[11] Paragraph 136 of the FAC states: "In 1969, Patrick Moynihan, then-Advisor to President Nixon, wrote a letter to White House counsel John Erlichman stating that CO_2 pollution resulting from burning fossil fuels was a problem perhaps on the scale of 'apocalyptic change,' threatening the loss of cities like new York and Washington D.C. from sea level rise. The 1969 Moynihan Letter urged the Federal Government to immediately address this threat."

[12] *See* Memorandum from Daniel Patrick Moynihan to John Erlichman (Sept. 17, 1969), *available at* https://www.nixonlibrary.gov/virtuallibrary/releases/jul10/56.pdf.

[13] *See* Google search results for "1969 Moynihan Letter to Erlichman," https://www.google.com/?gws_rd=ssl#q=1969+Moynihan+Letter+to+Erlichman (last visited Feb. 3, 2017).

[14] The first two sentences of Paragraph 3 of the FAC state: "The United States Environmental Protection Agency ("EPA") in 1990 and the Congressional Office of Technology Assessment in 1991 prepared plans to significantly reduce our nation's CO_2 emissions, stop global warming, and stabilize the climate system for the benefit of present and future generations. Both the EPA's 1990 Plan, 'Policy Options for Stabilizing Global Climate,' and the OTA's 1991 Plan, 'Changing By Degrees: Steps to Reduce Greenhouse Gases,' were prepared at the request of, and submitted to, Congress."

The first two sentences of Paragraph 3,[19] Paragraph 142,[20] and the first sentence of Paragraph 143[21] of the FAC similarly consist of statements from and factual assertions regarding

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[15] Paragraph 140 of the FAC states: "In response, in December 1990, EPA submitted a report to Congress on 'Policy Options for Stabilizing Global Climate.' The EPA's 1990 Report concluded: 'response to the greenhouse problem that are undertaken now will be felt for decades in the future, and lack of action now will similarly bequeath climate change to future generations."

[16] The first and fourth sentences of Paragraph 141 of the FAC state: "The EPA's 1990 Report called for a 50% reduction in total U.S. CO_2 emissions below 1990 levels by 2025….In its 1990 Report, EPA confirmed the Executive Branch's findings from 1965 that CO_2 was a 'dangerous' pollutant."

[17] *See*, United States Environmental Protection Agency, "Policy Options for Stabilizing Global Climate," (Dec. 1990), *available at* https://nepis.epa.gov/Exe/ZyNET.exe/91014BJ0.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1986+Thru+1990&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C86thru90%5CTxt%5C00000027%5C91014BJ0.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL.

[18] *See* Google search results for "Policy Options for Stabilizing Global Climate," https://www.google.com/#q=Policy+Options+for+Stabilizing+Global+Climate (last visited Feb. 3, 2017).

[19] The first two sentences of Paragraph 3 of the FAC state: "The United States Environmental Protection Agency ('EPA') in 1990 and the Congressional Office of Technology Assessment in 1991 prepared plans to significantly reduce our nation's CO_2 emissions, stop global warming, and stabilize the climate system for the benefit of present and future generations. Both the EPA's 1990 Plan, 'Policy Options for Stabilizing Global Climate,' and the OTA's 1991 Plan, 'Changing By Degrees: Steps to Reduce Greenhouse Gases,' were prepared at the request of, and submitted to, Congress."

[20] Paragraph 142 of the FAC states: "In 1991, promptly following EPA's 1990 Report, the Congressional Office of Technology Assessment ("OTA") delivered to Congress its own report, 'Changing by Degrees: Steps to Reduce Greenhouse Gases.' Finding the United States was the single largest contributor to carbon pollution, the OTA's 1991 Report developed an 'energy conservation, energy-supply, and forest-management package that can achieve a 20- to 35-

the content and context of the Congressional Office of Technology and Budget's 1991 Report, "Changing by Degrees: Steps to Reduce Greenhouse Gases." Though Intervenor Defendants also claimed "lack of sufficient knowledge to admit or deny the allegations" regarding this Report, ECF 93 at ¶¶ 142, 143, a Google search of the document's title lists links to the Report[22] as the top five search results.[23]

The second through fifth sentences of Paragraph 145[24] of the FAC consist of quotes from, and factual assertions relating to, the founding document of the United Nations Framework Convention on Climate Change (UNFCCC), citing to specific articles therefrom. Again, despite Intervenor Defendants' claim to "lack sufficient knowledge to admit or deny the allegations,"

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percent emissions reduction' through a mix of regulatory and market-based federal policies, in order to prevent global warming and climate change. OTA reported that, if its 'package' was implemented, the Federal Government could lower CO_2 emissions 35% from 1987 levels by 2015 and possibly save the Federal Government $20 billion per year. OTA determined that the 35% necessary reduction in CO_2 emissions was only the beginning and further efforts in the 21st century would be required to stabilize our nation's climate system."

[21] The first sentence of Paragraph 143 of the FAC states: "The OTA's 1991 Report stated that major reductions of CO_2 would require significant new initiatives by the Federal Government and must be sustained over decades, even before all the scientific certainties are resolved:'[I]t is clear that the decision to limit emissions cannot await the time when the full impacts are evident. The lag time between emission of the gases and their full impact is on the order of decades to centuries; so too is the time needed to reverse any effects.'"

[22] *See* United States Congress, Office of Technology Assessment, *Changing By Degrees: Steps to Reduce Greenhouse Gases*, *OTA-O-482* (Washington, DC: U.S. Government Printing Office, February 1991) *available at* https://www.princeton.edu/~ota/disk1/1991/9111/911101.PDF.

[23] *See* Google search results for "Changing By Degrees: Steps to Reduce Greenhouse Gases," https://www.google.com/#q=Changing+By+Degrees:+Steps+to+Reduce+Greenhouse+Gases (last visited Feb. 3, 2017).

[24] The second through fifth sentences of Paragraph 145 of the FAC state: "The UNFCCC was executed to 'protect the climate system for the benefit of present and future generations of humankind.' The UNFCCC evidences an 'overwhelming weight' of support for protection of the atmosphere under the norms and principles of intergenerational equity. UNFCCC, Art. 3. The minimal objective of the UNFCCC is the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level would be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.' UNFCCC, Art. 2."

ECF 93 at ¶ 145 (second sentence), a Google search of "UNFCCC Articles" lists a link to the founding document,[25] maintained by UNFCCC, as the top search result.[26]

Finally, the first three sentences of Paragraph 246[27] of the FAC comprise statements regarding the content of the EPA-funded study, "Ensemble Projections of Wildfire Activity and Carbonaceous Aerosol Concentrations over the Western United States in the Mid-21st Century." Intervenor Defendants again claim "lack sufficient knowledge to admit or deny the allegations," ECF 93 at ¶ 246, even though a Google search of the Report's title lists two links to the Report[28] in the top three search results.[29]

Intervenor Defendants assert they are without sufficient knowledge to admit or deny Plaintiffs' allegations regarding the content of readily available public documents – when the content is readily ascertainable by performing simple inquiries on internet search engines such as Google. Such a response in an answer is contrary to the letter and spirit of Rule 11. Where information is readily available by internet search and government websites, a party cannot claim to be without sufficient knowledge to admit or deny. Such a claim compels a finding of failure to conduct a reasonable inquiry. *See Ruth*, 604 F.3d at 911-12, 913; *Bay State Towing Co.*, 899 F.2d at 132; *Song FI, Inc., supra,* 2016 WL 4180214 at *2; *Jones v. Zimmer*, No 2:12-cv-01578-JAD-NJK, 2014 WL 6772916 at *6 (D. Nevada Dec. 2, 2014); *Wachovia Bank, N.A.* v. *Chaparral Contracting, Inc.*, No. 20:09-CV-00164, 2010 WL 2803016 (D. Nevada July 12, 2010). Considering the ease of such online inquiries, and the extended time available to Intervenor Defendants to conduct the inquiries, Intervenor Defendants' counsel violated Rule 11 by failing to conduct a reasonable inquiry with respect to Paragraphs 2, 3, 132-136, 140-43, 145, and 246 of their answer to the FAC.

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[25] *See* United Nations Framework On Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107, *available at* https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.

[26] *See* Google search results for "UNFCCC Articles," https://www.google.com/#q=unfccc+articles (last visited Feb. 3, 2017)

[27] The first three sentences of Paragraph 246 state: "In an EPA-funded study, 'Ensemble Projections of Wildfire Activity and Carbonaceous Aerosol Concentrations over the Western United States in the Mid-21st Century," scientists estimated that, by 2050, wildfire activity is expected to double in the Southwest, Pacific Northwest, Rocky Mountain Forest, and the Eastern Rockies/Great Plains regions. In the western U.S., increases in temperature are projected to cause an increase of 54% in annual mean area burned by 2050 relative to the present day. Changes in area burned are ecosystem dependent, with the forests of the Pacific Northwest and Rocky Mountains experiencing the greatest increases of 78% and 175% respectively. Increased area burned results in near doubling of wildfire carbonaceous aerosol emissions by midcentury."

[28] *See* Xu Yue, *et al.*, "Ensemble Projections of Aerosol Concentrations Over the Western United States in the Mid-21st Century" (Atmospheric Environment 2010), *available at* http://acmg.seas.harvard.edu/publications/2013/xyue_ae_submitted.pdf.

[29] *See* Google search results for "Ensemble Projections of Aerosol Concentrations Over the Western United States in the Mid-21st Century," https://www.google.com/?gws_rd=ssl#q=Ensemble+Projections+of+Wildfire+Activity+and+Carbonaceous+Aerosol+Concentrations+over+the+Western+United+States+in+the+Mid-21st+Century (last visited Feb. 3, 2017).

2. A Reasonable and Competent Inquiry Reveals Intervenor Defendants Had Longstanding Information to Admit or Deny Portions of the FAC

Intervenor Defendants claim to "lack sufficient knowledge to admit or deny the factual allegations" contained within the following paragraphs, or portions thereof, from the FAC: 131, 150, 202, 205, 206, 208, 210, 211, 215, 216, 217, 224, 228, 230, 231, 245, and 247. A "reasonable inquiry" conducted by Intervenor Defendants' counsel would have revealed that the trade associations and many of their member organizations (such as ExxonMobil Corporation),[30]

[30] For example, ExxonMobil Corporation (formerly Exxon Corporation) is a longtime member of Defendant American Petroleum Institute ("API"). Internal Revenue Service Form 990 filings from API demonstrate ExxonMobil's leadership role in API since at least 2004. Former ExxonMobil CEO Rex Tillerson was an API Board Member in 2006-2014, 2013, 2012, 2011, 2010, 2009, 2007, and 2006, and Chairman of the Board of Directors in 2008. Before Mr. Tillerson, former ExxonMobil CEO Lee Raymond was an API Board Member and member of the Executive Committee in 2004-2005 and 2004. ExxonMobil is also a member of Defendant National Association of Manufacturers ("NAM"), with a representative on the Executive Committee of NAM. ExxonMobil is also a member of Defendant American Fuel & Petrochemical Manufacturers ("AFPM") and is represented on the Executive Committee and the Board of Directors of AFPM. *See* ¶¶ 3-15, Declaration of Julia A. Olson in Support of Plaintiffs' (Draft) Motion For Sanctions Under Rule 11 ("Olson Dec.").

on whose behalf they intervened,[31] have sufficient knowledge to respond to at least portions of the factual allegations contained within the previously mentioned paragraphs.

Many members of Intervenor Defendants, or high-ranking officers and representatives thereof, sit on Intervenor Defendants' boards of directors or executive committees or serve as high-ranking officers. Accordingly, documents, records, and other information in the possession of, accessible to, and within the knowledge of Intervenor Defendants' members is attributable to Intervenor Defendants and accessible to them by reasonable inquiry. As a general rule, knowledge of a director, officer, employee, or agent of a corporation is imputed to the corporation itself. *See generally*, 19 C.J.S. Corporations § 727; *see also*, *id.* at § 807 (listing extensive categories of employees and agents ranging from assistant secretaries to shareholders, whose knowledge may be imputed to corporation). Such knowledge does not have to be possessed by a single corporate agent; the cumulative knowledge of several agents can be imputed to the corporation. 3 Fletcher Cyc. Corp. § 790 (citing *Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424 (9th Cir. 1995)). Additionally, where a director, officer, employee, or other agent of a corporation simultaneously serves the interest of more than one corporation, knowledge of such individual is attributable to both corporations. *See* 3 Fletcher Cyc. Corp. § 824. "Facts critical to a company's core operations…generally are so apparent that their knowledge may be attributed to the company.…" 26 A Sec. Lit. Damages § 24:56. As discussed below, documents and records of Intervenor Defendants and their members contain ample information touching upon the FAC's allegations regarding the realities of climate change. The existence of these documents, their ready availability, and the imputation to Intervenor Defendants of the knowledge they reflect establishes that Intervenor Defendants' counsel failed to conduct a reasonable inquiry with respect to their answer to the FAC.

[31] *See* Intervenor Defendants' Motion to Intervene, ECF 14 at 3 ("If Plaintiffs succeed, each of the Proposed Intervenor Defendants' *members* will be harmed in various ways." (emphasis added)); *see also* Memorandum in Support of Motion to Intervene, ECF 15 at 11-15 (arguing relief sought by Plaintiffs will harm Intervenor Defendants' members).

"An answer asserting want of knowledge sufficient to form a belief as to the truth of facts alleged in a complaint does not serve as a denial if the assertion of ignorance is obviously [a] sham. In such circumstances the facts alleged in the complaint stand admitted." *Harvey Aluminum (Inc.) v. N.L.R.B.*, 335 F.2d 749, 758 (9th Cir. 1964). Given the ready, public availability of information in the records of Intervenor Defendants and their members touching upon the veracity of the FAC's allegations, Intervenor Defendants' feigned ignorance is obviously a sham. Such allegations should be deemed admitted.

¶ **131**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first sentence of this paragraph. The first sentence alleges: "As early as 1899, scientists understood that CO2 concentrations in the atmosphere cause heat retention on Earth and that a doubling or tripling of the CO2 content in 1899 would significantly elevate Earth's surface temperature." On May 18, 1978, James F. Black, a Scientific Advisor in Exxon Corporation's Products Research Division delivered a presentation on the Greenhouse Effect to the PERCC Meeting on The Greenhouse Effect, stating that "CO_2… contributes to warming the lower atmosphere by what has been called the "Greenhouse Effect."[32] That presentation included Vugraph 9, *infra*, which shows the significant increase in Earth's surface temperature if CO_2 contents were doubled.

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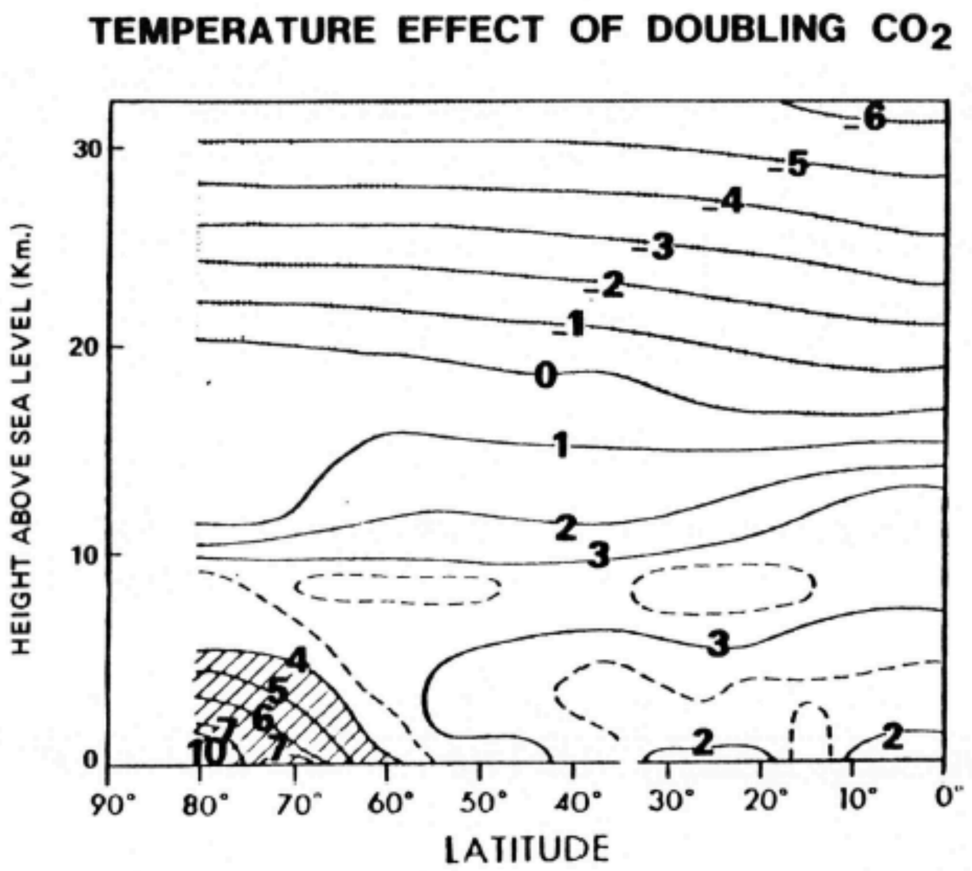
[32] Olson Dec., Exh. 1, James F. Black, *The Greenhouse Effect*, Exxon Research and Engineering Company 1 (1978), *available at* http://insideclimatenews.org/sites/default/files/documents/James%20Black%201977%20Presentation.pdf.

VUGRAPH 9


TEMPERATURE EFFECT OF DOUBLING CO2
HEIGHT ABOVE SEA LEVEL (Km.)
LATITUDE
90° 80° 70° 60° 50° 40° 30° 20° 10° 0°
0 10 20 30
-6 -5 -4 -3 -2 -1 0 1 2 3 3 2 2 4 5 6 7 7 10

Furthermore, on November 12, 1982, M. B. Glaser, Exxon's Manager of Environmental Affairs Programs, distributed extensive briefing material on the CO_2 Greenhouse Effect to Exxon management. According to Glaser, "The material has been given wide circulation to Exxon management and is intended to familiarize Exxon personnel with the subject [the CO2

"Greenhouse" effect]."[33] In this briefing material, Exxon estimated that the CO_2 content of the atmosphere would double "around the year 2090 based upon fossil fuel requirements projected in Exxon's long range energy outlook…" and their best estimate was "that doubling of the current concentration could increase average global temperature by about 1.3 degrees C to 3.1 degrees C."[34]

¶ **150**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in the second sentence of this paragraph: "As Defendants have acknowledged, the use of fossil fuels is a major source of these ["business as usual" CO_2] emissions, placing our nation on an increasingly costly, insecure, and environmentally dangerous path." An inter-office correspondence between Exxon scientist Werner Glass and Exxon scientist and manager Roger Cohen on August 18, 1981 shows that Exxon understood that if global CO_2 emissions followed the business as usual CPD (Corporate Planning Department) "2030 Study" trajectory, there was a distinct possibility "that the CPD Scenario will later produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth's population). This is because the global ecosystem in 2030 might still be in a transient, headed for much more significant effects after time lags perhaps of the order of decades."[35] Exxon's CPD trajectory and projections for the growth of atmospheric CO_2 concentrations and increased average global temperatures between 1960 and 2100 is illustrated in Figure 3[36]:

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[33] Olson Dec., Exh. 2, M. B. Glaser, *CO_2 "Greenhouse" Effect*, Exxon Research and Engineering Company 1 (Nov. 12, 1982), *available at* https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf.
[34] *Id*. at EC-11-5/A3.
[35] Olson Dec., Exh. 3, Letter from Roger W. Cohen to Werner Glass, Exxon Corporation 1 (Aug. 18, 1981), *available at* http://insideclimatenews.org/sites/default/files/documents/%2522Catastrophic%2522%20Effects%20Letter%20%281981%29.pdf.
[36] Olson Dec., Exh. 2, M. B. Glaser, *CO_2 "Greenhouse" Effect*, Exxon Research and Engineering Company (Nov. 12, 1982), *available at* https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf.

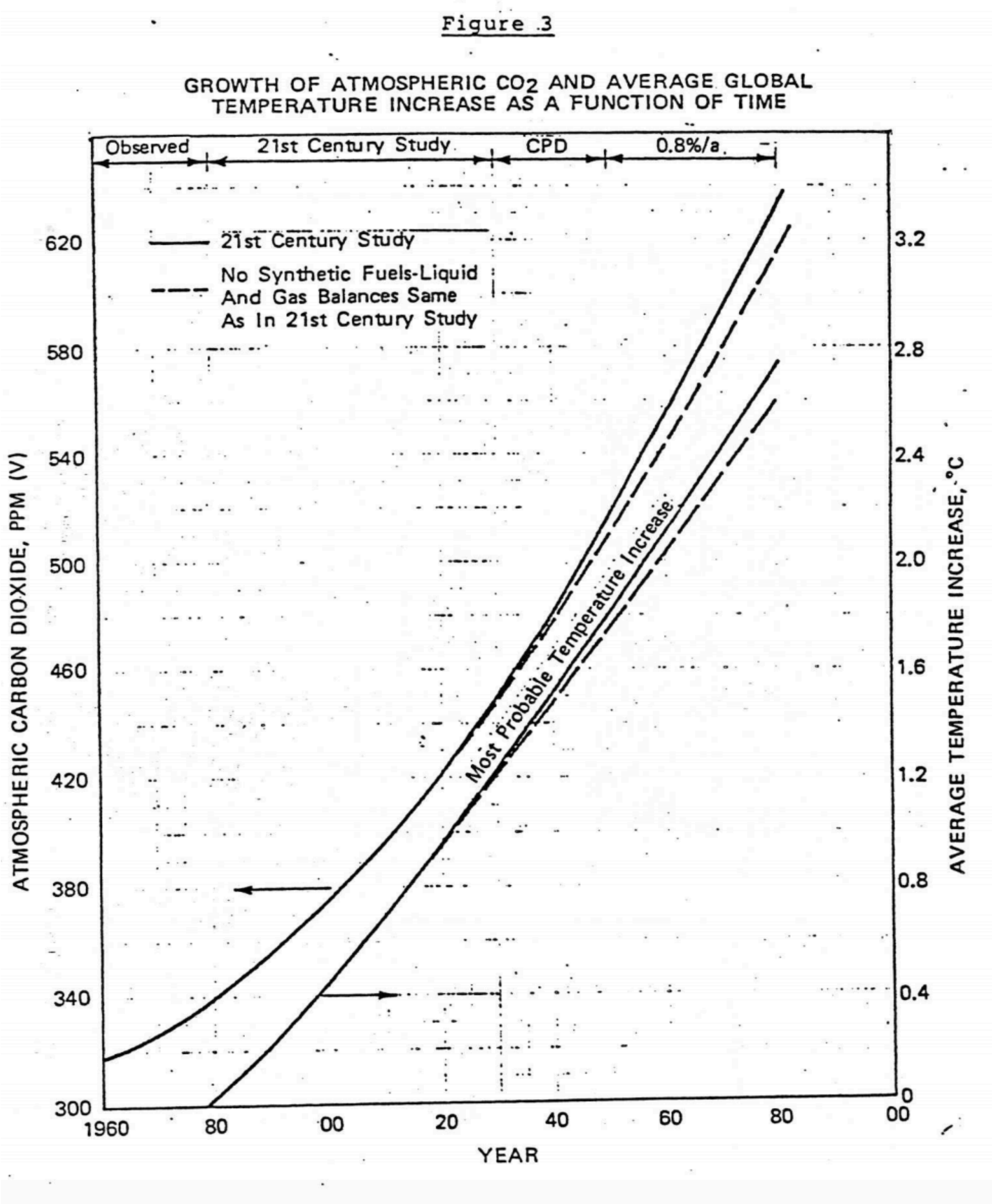
Figure 3
GROWTH OF ATMOSPHERIC CO2 AND AVERAGE GLOBAL TEMPERATURE INCREASE AS A FUNCTION OF TIME
Observed
21st Century Study
CPD
0.8%/a
21st Century Study
No Synthetic Fuels-Liquid And Gas Balances Same As In 21st Century Study
Most Probable Temperature Increase
ATMOSPHERIC CARBON DIOXIDE, PPM (V)
AVERAGE TEMPERATURE INCREASE, °C
YEAR
620
580
540
500
460
420
380
340
300
3.2
2.8
2.4
2.0
1.6
1.2
0.8
0.4
0
1960
80
00
20
40
60
80
00

¶ **202**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the second sentence of this paragraph. The second sentence alleges: "Present climate change is a consequence of anthropogenic GHGs, primarily CO_2, derived from the combustion of fossil fuels." On May 18, 1978, James F. Black, a Scientific Advisor in Exxon

Corporation's Products Research Division delivered a presentation on the Greenhouse Effect to the PERCC Meeting on The Greenhouse Effect, stating that "[c]urrent opinion overwhelmingly favors attributing atmospheric CO_2 increase to fossil fuel combustion."[37] Additionally, on November 12, 1982, M. B. Glaser, Exxon's Manager of Environmental Affairs Programs, distributed extensive briefing material on the CO_2 Greenhouse Effect to Exxon management, and said that "[m]itigation of the 'greenhouse effect' would require major reductions in fossil fuel combustion."[38]

¶ **205**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in both sentences of this paragraph. The paragraph alleges: "Greenhouse gases in the atmosphere act like a blanket over the Earth, trapping energy received from the sun. More GHG emissions in the atmosphere means that more energy
is retained on Earth, with less being radiated back into space." On May 18, 1978, James F. Black, a Scientific Advisor in Exxon Corporation's Products Research Division delivered a presentation on the Greenhouse Effect to the PERCC Meeting on The Greenhouse Effect, stating that CO_2 "can absorb and return part of the infrared radiation which the earth radiates toward space…" and that "CO_2… contributes to warming the lower atmosphere by what has been called the "Greenhouse Effect."[39]

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[37] Olson Dec., Exh. 1, James F. Black, *The Greenhouse Effect*, Exxon Research and Engineering Company Vugraph 7 (1978), *available at* http://insideclimatenews.org/sites/default/files/documents/James%20Black%201977%20Presentation.pdf.

[38] Olson Dec., Exh. 2, M. B. Glaser, *CO_2 "Greenhouse" Effect*, Exxon Research and Engineering Company EC-11-5/A4 (Nov. 12, 1982), *available at* https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf.

[39] Olson Dec., Exh. 1, James F. Black, *The Greenhouse Effect*, Exxon Research and Engineering Company 1 (1978), *available at* http://insideclimatenews.org/sites/default/files/documents/James%20Black%201977%20Presentation.pdf.

¶ **206**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first and third sentences of this paragraph. The first sentence alleges: "A substantial portion of every ton of CO2 emitted by humans persists in the atmosphere for as long as a millennium or more." The third sentence alleges "Our nation will continue to warm in response to concentrations of CO2 from past emissions, as well as future emissions." On November 12, 1982, M. B. Glaser, Exxon's Manager of Environmental Affairs Programs, distributed extensive briefing material on the CO_2 Greenhouse Effect to Exxon management. The materials included Table 4[40] (*infra*), which demonstrates a sophisticated understanding of how continued global emissions would incrementally lead to persistent increases in atmospheric CO_2 concentrations and average temperature increases.

TABLE 4

ESTIMATED ATMOSPHERIC CO_2 CONCENTRATION AND AVERAGE TEMPERATURE INCREASE 21st CENTURY STUDY--HIGH CASE

Year	Emitted, GtC		Stored in Atmosphere, GtC		Atmospheric Concentration, ppm		Average Temperature Increase, °C
	Incremental	Cummulative	Incremental	Cummulative	Incremental	Cummulative	
1979	--	--	--	715	--	337	0
1990	69.3	69.3	37.1	752	17.5	355	0.22
2000	77.2	146.5	41.3	793	19.5	374	0.45
2015	137.5	284.0	73.6	867	34.7	409	0.84
2030	163.3	447.3	87.4	954	41.2	450	1.25
2050	263.5	710.8	141.0	1095	66.5	516	1.84
2080	490.6	1201.4	262.5	1358	123.7	640	2.78
2090	191.3	1392.7	102.3	1160	48.2	688	3.09

-24-

¶ **208**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegation in at least the first sentence of this paragraph, which states: "In 2013, the atmospheric CO_2 concentration exceeded 400 ppm for the first time in recorded history." In 1979, Exxon Research and Engineering employee Steve Knisely made and memorialized the results of a study

[40] Olson Dec., Exh. 2, M. B. Glaser, *CO_2 "Greenhouse" Effect*, Exxon Research and Engineering Company (Nov. 12, 1982), *available at* https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf.

on the impact of fossil fuel combustion on the CO_2 concentration in the atmosphere.[41] Knisely's report concluded that, under scenarios in which no limits were placed on emissions, or where CO_2 concentrations increases were to be limited to 510 ppm, "[n]oticeable temperature changes would occur around 2010 as the concentration reaches 400 ppm."[42] Knisely's report was circulated widely among Exxon.[43] Exxon's Figure 3, *supra*, similarly demonstrates that Exxon's own records show its knowledge that atmospheric CO_2 concentrations would reach 400 ppm by approximately 2010, as early as 1982.[44] Further demonstrating counsel for Intervenor Defendants' failure to conduct a reasonable inquiry with respect to this allegation are counsel's own statements at the Rule 16 hearing on February 7, 2017. In response to Magistrate Judge Coffin's question as to whether Intervenor-Defendants "have an expert witness that [they] intend to call…that will opine that the CO_2 levels are not at 400 ppm, but are something other than that," February 7, 2017 Transcript 17: 9-12, counsel for Intervenor Defendants responded that they 'don't know", *id.* at 17: 13, suggesting that they had not yet made an inquiry as to 400 ppm.

¶ 210: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegation in at least the third sentence of this paragraph. The third sentence alleges: "Warming is expected to hit 1°C in 2015-16." In 1985, Exxon climate modeler Brian P. Flannery presented a CO_2 research update. The graph below demonstrates Exxon's knowledge that temperature had

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41 Olson Dec., Exh. 11, Steve Knisely, *Controlling the CO2 Concentration in the Atmosphere*, Exxon Research and Engineering Company (October 16, 1979), *available at* http://insideclimatenews.org/sites/default/files/documents/CO2%20and%20Fuel%20Use%20Projections.pdf.

42 *Id.* at 5, 6.

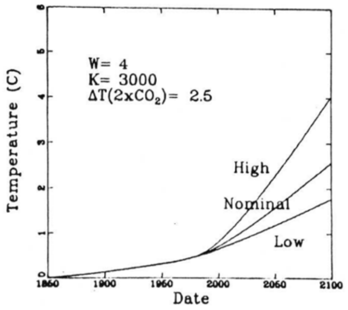
43 *See* Olson Dec., Exh. 11, W.L. Ferral, Letter to R.L. Hirsch, et al. re: *Controlling Atmospheric CO_2*, Exxon Research and Engineering Company (October 16, 1979) (enclosing Knisely Report and distributing to ten recipients within Exxon, including J.F. Black), *available at* http://insideclimatenews.org/sites/default/files/documents/CO2%20and%20Fuel%20Use%20Projections.pdf.

44 Olson Dec., Exh. 2, M. B. Glaser, *CO_2 "Greenhouse" Effect*, Exxon Research and Engineering Company (Nov. 12, 1982), *available at* https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf.

already risen since the middle of the Industrial Revolution (~1850) and that 1°C warming would occur between 2007 and 2033[45]:

TEMPERATURE CHANGE FOR VARIOUS CO2 FORECASTS

- Surface temperature variation
  - + (1850-1985) 0.52 C
  - + 1 C warming (2007, 2018, 2033)



- Lag time decades, not hundreds of years

¶ **211**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegation in at least the third sentence of this paragraph. The third sentence alleges: "The survival and well-being of Plaintiffs is significantly threatened by climate destabilization." A March 1982 report prepared for the American Petroleum Institute by Columbia University's Lamont-Doherty Geological Observatory, entitled *Climate Models and CO_2 Warming: A Selective Review and Summary*, stated: "[Climate models] all predict some kind of increase in temperature within a global mean range of 4°C… Such a warming can have serious consequences for man's comfort and survival since patterns of aridity and rainfall can change, the height of the sea level can increase considerably and the world food supply can be affected."[46]

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[45] Olson Dec., Exh. 4, Brian P. Flannery, *CO_2 Greenhouse Update 1985*, Exxon Research and Engineering Company 24 (Oct. 4, 1985), *available at* https://insideclimatenews.org/sites/default/files/documents/CO2%20Research%20Update%281985%29.pdf.

¶ **215**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations of this paragraph, which alleges: "If carbon pollution is not quickly abated, there is near scientific certainty that humanity will suffer sea level rise of several meters, submerging much of the eastern seaboard of the U.S., including Florida, as well as other low lying areas of Europe, the Far-East, and the Indian sub-continent." On March 28, 1984, Henry Shaw, a manager of the Environmental Area in Exxon Research and Engineering's Technology Feasibility Center, delivered a presentation on *CO_2 Greenhouse and Climate Issues* at the EUSA/ER&E Environmental Conference. A section from that presentation stated that "A 2 to 3°C increase in global average temperature can be amplified to about 10°C at the poles. This could cause polar ice melting and a possible sea-level rise of 0.7 meter by 2080… We can either adapt our civilization to a warmer planet or avoid the problem by sharply curtailing the use of fossil fuels."[47]

¶ **216**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the second sentence of this paragraph. The second sentence alleges: "Increased CO_2 emissions are already resulting not only in the warming of land surfaces, but also in the warming of oceans, increasing atmospheric moisture levels, rising global sea levels, and changing rainfall and atmospheric air circulation patterns that affect water and heat distribution." On September 2, 1982, Roger W. Cohen – Director of Exxon's Theoretical and Mathematical

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[46] Olson Dec., Exh. 5, Alan Oppenheim & William L. Donn, *Climate Models and CO_2 Warming: A Selective Review and Summary*, American Petroleum Institute 5 (Mar. 16, 1982), *available at* http://insideclimatenews.org/sites/default/files/documents/API%201982%20Climate%20models%20and%20CO2%20warming.pdf.

[47] Olson Dec., Exh. 6, Henry Shaw, *CO_2 Greenhouse and Climate Issues*, Exxon Research and Engineering Company 14 (Mar. 28, 1984), *available at* https://insideclimatenews.org/sites/default/files/documents/Shaw%20Climate%20Presentation%20%281984%29.pdf.

Sciences Laboratory – reported on Exxon's own analysis of climate models, stating "[t]here is unanimous agreement in the scientific community that a temperature increase of this magnitude [1.5 – 4.5 °C] would bring about significant changes in the earth's climate… including rainfall distribution and alterations in the biosphere."[48]

¶ **217**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first and second sentence of this paragraph. Those two sentences allege: "One key observable change is the rapid increase in recorded surface temperatures. As a result of increased atmospheric CO_2 from human activities, our nation has been warming as scientists predicted as early as 1965." Exxon's Figure 3, *supra,* shows that as early as 1982, Exxon had already observed increases in atmospheric carbon dioxide and average global temperature, and expected both values to continue increasing as emissions from the use of fossil fuels for human activities grew on an annual basis.

¶ **224**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first sentence of this paragraph, which alleges "there has been an increase in permafrost temperatures and melting in Alaska." On March 28, 1984, Henry Shaw, a manager of the Environmental Area in Exxon Research and Engineering's Technology Feasibility Center, delivered a presentation on *CO_2 Greenhouse and Climate Issues* at the EUSA/ER&E Environmental Conference, stating that "A 2 to 3°C increase in global average temperature can be amplified to about 10°C at the poles."[49] While global average temperature has not yet increased to 2°C, Exxon has known for more than 30 years that average warming will be amplified in the higher latitudes and that higher temperatures will increase Arctic melt rates.

[48] Olson Dec., Exh. 7, Letter from Roger W. Cohen to Al M. Natkin, Exxon Research and Engineering Company 1 (Sep. 2, 1982), *available at* http://insideclimatenews.org/sites/default/files/documents/%2522Consensus%2522%20on%20CO2%20Impacts%20%281982%29.pdf.

[49] Olson Dec., Exh. 6, Henry Shaw, *CO_2 Greenhouse and Climate Issues*, Exxon Research and Engineering Company 14 (Mar. 28, 1984), *available at* https://insideclimatenews.org/sites/default/files/documents/Shaw%20Climate%20Presentation%20%281984%29.pdf.

¶ **228**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first sentence of this paragraph, which alleges "Agriculture is extremely susceptible to climate change, threatening food security." On May 18, 1978, James F. Black, a Scientific Advisor in Exxon Corporation's Products Research Division delivered a presentation on the Greenhouse Effect to the PERCC Meeting on The Greenhouse Effect, stating that "Some countries would benefit [from a warmer climate that shifted desert and fertile areas of the globe toward higher latitudes] but others could have their agricultural output reduced or destroyed."[50]

¶ **230**: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegation in at least the first clause of the second sentence of this paragraph, which alleges: "The oceans absorb approximately 25-30% of global CO2 emissions…." On March 26, 1979, Exxon researcher Edward A. Garvey and Exxon manager Henry Shaw delivered a presentation to the National Oceanic and Atmospheric Administration outlining its proposed research into the greenhouse effect, which included an ocean sampling program that aimed to "determine CO_2 flux between air and ocean…."[51] The ocean sampling program was conducted aboard Exxon's Esso Atlantic supertanker until 1982 and data from the program was used in 2009 by one of the project's partner scientists, Columbia University Professor Takahashi, to show that "the oceans absorb only about 20 percent of the CO2 emitted annually from fossil fuels and other human activities."[52]

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[50] Olson Dec., Exh. 1, James F. Black, *The Greenhouse Effect*, Exxon Research and Engineering Company 1 (1978), *available at* http://insideclimatenews.org/sites/default/files/documents/James%20Black%201977%20Presentation.pdf.

[51] Olson Dec., Exh. 8, Edward A. Garvey, et. al., *Proposed Exxon Research Program to Help Assess the Greenhouse Effect*, Exxon Corporation (Mar. 26, 1979), *available at* https://insideclimatenews.org/sites/default/files/documents/Presentation%20to%20NOAA%20%281979%29.pdf.

[52] Neela Banerjee, et. al., *Exxon Believed Deep Dive Into Climate Research Would Protect its Business*, InsideClimate News (Sep. 17, 2015), https://insideclimatenews.org/news/16092015/exxon-believed-deep-dive-into-climate-research-would-protect-its-business.

¶ 231: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegation in at least the third sentence of this paragraph, which alleges "Organisms at risk [from ocean acidification] include: corals, oysters, clams, scallops, mussels, abalone, crabs, geoducks, barnacles, sea urchins, sand dollars, sea stars, sea cucumbers, many common single-celled organisms and protists that act as prey, and various forms of seaweed." A 1984 Exxon report on developing natural gas off Natuna Island in the South China Sea reveals that Exxon knew "increasing the concentration of CO_2 in seawater increases acidity" and that "large amounts of CO_2 does cause a negative impact in seawater by its effect on pH."[53] One of the admitted negative impacts was that "If the pH falls below 7.4, calcite in shells begins to dissolve." *Id.*

¶ 245 and ¶ 247: Intervenor Defendants have sufficient knowledge to admit or deny the factual allegations in at least the first sentence of both paragraphs. The first sentence of ¶ 245 alleges: "Global temperature increases are projected to increase by 9° Fahrenheit by 2100." The first sentence of ¶ 247 alleges: "Human-induced warming, if business continues as usual, is projected to raise average temperatures by about 6° to 11° Fahrenheit in this century." Exxon's Figure 3, supra, shows that Exxon was projecting average global temperature increases for the entirety of this century until the year 2100.

Additionally, between 1979 and 1983 the American Petroleum Institute (API) ran a CO_2 and Climate task force to "monitor and share climate research…."[54] Minutes from a February 9, 1980 meeting of the task force show that Professor John A. Laurmann of Stanford University presented on "The CO_2 Problem: Addressing Research Agenda Development." In this presentation, Laurmann shared that a 2.5°C temperature increase was projected by 2038, leading to "major economic consequences…", and a 5°C increase was projected by 2067, leading to "globally catastrophic effects."[55]

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[53] Olson Dec., Exh. 9, Brian P. Flannery, et. al., *The Fate of CO_2 from the Natuna Natural Gas Project if Disposed by Subsea Sparging*, Exxon Research and Engineering Company 22-23 (1984), *available at* http://insideclimatenews.org/sites/default/files/documents/CO2%20Sparging%20Report%20%281984%29.pdf.

[54] Neela Banerjee, *Exxon's Oil Industry Peers Knew About Climate Dangers in the 1970s, Too*, InsideClimate News (Dec. 22, 2015), https://insideclimatenews.org/news/22122015/exxon-mobil-oil-industry-peers-knew-about-climate-change-dangers-1970s-american-petroleum-institute-api-shell-chevron-texaco.

Finally, many of the members for the National Association of Manufacturers ("NAM") maintain corporate positions on climate change that are at odds with the Intervenor Defendants' answer. Counsel for Intervenor Defendants either ignored these positions or failed to conduct a reasonable inquiry into the knowledge and information of at least the following NAM members represented on the NAM Board of Directors:

Intel Corporation, a NAM member with a representative on the NAM Board of Directors,[56] stated:

> In the absence of significant decreases in emissions, the planet is likely to warm more than 2 degrees C above pre-industrial temperatures during the 21st Century, and could warm by more than 4 degrees C. This level of warming is likely to be accompanied by significant sea level rise, as well as impacts to water resources, ecosystems, and human health. Although uncertainty surrounds how climate change may affect some types of extreme weather events, there is a high degree of certainty that heat waves have and will continue to increase in frequency and severity, and that heavy precipitation events will be more frequent in many regions.[57]

A reasonable inquiry into this statement provides sufficient knowledge to admit or deny the factual allegations in at least the first sentence of both ¶ 245 and ¶ 247. The first sentence of ¶ 245 alleges: "Global temperature increases are projected to increase by 9° Fahrenheit by 2100."

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[55] Olson Dec., Exh. 10, Jimmie J. Nelson, *AQ-9 Task Force Minutes of Meeting*, American Petroleum Institute (Mar. 18, 1980), *available at* http://insideclimatenews.org/sites/default/files/documents/AQ-9%20Task%20Force%20Meeting%20%281980%29.pdf.

[56] *See Board of Directors*, National Association of Manufacturers, http://www.nam.org/About/Board-of-Directors/ (last visited Feb. 13, 2017).

[57] Intel Corporation, *Global Climate Change Policy Statement* 4 (2015), http://www.intel.com/content/www/us/en/corporate-responsibility/environment-climate-change-policy-harper.html?wapkw=climate+change.

The first sentence of ¶ 247 alleges: "Human-induced warming, if business continues as usual, is projected to raise average temperatures by about 6° to 11° Fahrenheit in this century."

BP America, Inc. is a NAM member, represented on the NAM Board.[58] Its parent company, BP p.l.c., "recognizes that the existing trend of increasing greenhouse gas emissions worldwide is not consistent with limiting the global average temperature rise to 2°C or lower."[59] Ford Motor Company, a NAM member represented on NAM's Board,[60] says "[t]he increase in atmospheric concentrations of these greenhouse gases (GHGs) is primarily caused by burning fossil fuels…" and that climate stabilization "can only be achieved by significantly and continuously reducing GHG emissions over a period of decades in all sectors of the economy as well as across the globe."[61]

3. A Reasonable and Competent Inquiry Would Have Revealed Intervenor Defendants Had Sufficient Information to Admit Portions of the FAC

Intervenor Defendants denied or claimed to lack sufficient knowledge to respond to many of factual allegations in the FAC. However, a reasonable and competent inquiry would have revealed Intervenor Defendants had sufficient information and knowledge, both through their own records, as well as those of their member organizations and through publicly available documents cited in the FAC, to respond to allegations for which they claimed insufficient knowledge.

Additionally, where the results of such an inquiry may have revealed facts that deviate slightly from the exact facts, figures, and projections presented in the FAC, such facts would have allowed Intervenor Defendants to admit portions of the FAC's factual allegations with slight alterations in the averments, as Federal Defendants did. For instance, in response to the allegation that "nearly half of the EPA-asserted emission reduction [of 32% under the 'Clean Power Plan'] was already realized in the 2005-2014 period, namely *before* the 'Clean Power Plan' was finalized," FAC at ¶ 127, Federal Defendants admitted the allegation, slightly altering the averment. Where the FAC alleged existing emissions reductions of nearly 16%, Federal Defendants "admit the CO_2 emissions from the electric power sector in 2014, before the Clean Power Plan was finalized, were approximately *18 percent* below 2005 levels." ECF 98 at ¶ 127 (emphasis added). Federal Defendants offered nuanced admissions with slight alterations to averments in response to numerous other factual allegations in the FAC. *See e.g.*, ECF 98 at ¶ ¶ 155 (admitting that 2014 U.S. fossil fuel production was 69.653 Quadrillion Btus where FAC ¶ 155 alleged 65.244 Quadrillion Btus), 208 (admitting CO_2 concentration exceeded 400 ppm in 2013 "for the first time in millions of years" where FAC ¶ 208 alleged that it was for the first time "in recorded history"), and ¶ 218 (admitting that sea levels have been rising at a rate of 3.4 millimeters per year, where FAC ¶ 155 alleged 3.2 millimeters per year). Federal Defendants' nuanced admissions serve the Court and the parties by streamlining the matters at issue for trial, reducing discovery, and comporting with Rule 8's requirement that "a party that intends in good faith to deny only part of an allegation must admit that part that is true and deny the rest." Fed. R. Civ. P. 8(b)(4). As the Court noted at the February 7, 2017 Rule 16 hearing with respect to whether Intervenor Defendants intend to dispute the factual allegations admitted by Federal Defendants: "That's going to be a big help in terms of how we manage this discovery to find out what the Intervenors intend to do." February 7, 2017 Transcript, 15: 18-20.

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[58] *See Board of Directors*, National Association of Manufacturers, http://www.nam.org/About/Board-of-Directors/ (last visited Feb. 13, 2017).
[59] BP, *The Climate Challenge* (2015), http://www.bp.com/en/global/corporate/sustainability/the-energy-challenge-and-climate-change/the-climate-challenge.html.
[60] *See Board of Directors*, National Association of Manufacturers, http://www.nam.org/About/Board-of-Directors/ (last visited Feb. 13, 2017).
[61] Ford Motor Company, *Climate Change* (2015), https://corporate.ford.com/microsites/sustainability-report-2014-15/environment-climate.html.

Finally, Intervenor Defendants are experienced litigants. They have intervened in numerous actions across the country, including actions in this Circuit. For example, API, represented by Sidley Austin, intervened in *Sierra Club v. U.S. Defense Energy Support Center*, Northern District of California Case No. 3:10-cv-02673-JSW. In that action, API answered the original Complaint and the First Amended Complaint.[62] In those answers, API admits and denies numerous allegations in both Complaints. Intervenor Defendants and their counsel know how to search records in order to admit or deny allegations in a complaint. Their failure to properly conduct such a search here and their bad faith responses to this FAC, unless sanctioned, will significantly and improperly expand the matters at issue for trial and discovery.

Despite having taken issue with "the extraordinarily vast scope of discovery in this case," ECF 109, pp. 2, 3, 4, despite having stated before the Court that "after the answer is filed…the issues should be narrowed," November 28, 2016 Transcript, ECF 100. 16: 18-19, and despite having had ample opportunity and an extension of time, Intervenor Defendants and their counsel made no effort to conduct a reasonable and competent search of Intervenor Defendants' own records, records of their constituent members, or of publicly available records cited in the FAC in order to produce accurate admissions and denials in response to the allegations in the FAC. Such a reasonable search should have led to answers of allegations in the FAC that would have significantly narrowed the factual matters at issue for trial and the scope of discovery. Furthermore, such a reasonable and competent search would have allowed Intervenor Defendants to offer admissions with slight alterations to averments in the FAC to further narrow the scope of discovery.

C. Intervenor Defendants' Counsel Should Be Sanctioned

These Rule 11 violations demand imposition of sanctions. "When individuals have 'the means of discovery in [their] power,' they generally are 'held to have known it.'" *Ruth*, 604 F.3d at 911 (quoting *Wood v. Carpenter*, 1010 U.S. 135, 141 (1879).) Courts impose sanctions under Rule 11 to the degree necessary "to deter repetition of such conduct," and such sanctions may take the form of monetary and/or nonmonetary sanctions. Fed. R. Civ. P. 11(c)(2). Nonmonetary sanctions include striking the offending filings or allegations. *See Jimenez v. Madison Area*

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[62] *See* Exhs. 12-15, Olson Dec. These exhibits consist of filings in the case *Sierra Club v. U.S. Defense Energy Support Center,* Northern District of California Case No. 3:10-cv-02673-JSW, some of which filings caption the case as *Sierra Club v. U.S. Defense Logistics Agency Energy*.

Technical Coll., 321 F.3d 652, 657 (7th Cir. 2003) (Dismissing complaint founded on the allegations that violated Rule 11); *Divane,* 200 F.3d at 1029 (Affirming imposition of sanctions against defendant where the court found defendant's failure "to make certain admissions was patently unreasonable."). The egregiousness and severity of the Rule 11 violations here should be considered in determining what sanctions are warranted. *See, e.g., Kendrick v. Zanides*, 609 F.Supp. 1162, 1173 (N.D. Cal. 1985) ("Because of the egregiousness of the conduct involved, the sanctions imposed will not be limited to expenses and attorneys' fees . . . "); *Mellow v. Sacramento County,* 365 Fed. App'x. 57, at *1 (9th Cir. 2010) ("The district court has wide discretion in determining the appropriate sanction for a Rule 11 violation"). Where a party claims a "lack of sufficient knowledge or information to form a belief as to the truth of allegations" that are "obviously within its knowledge or belief," such claims should have the effect of an admission of the relevant allegations. *Wachovia Bank, N.A.* v. *Chaparral Contracting, Inc.*, No. 20:09-CV-00164, 2010 WL 2803016 at *1-2 (D. Nevada July 12, 2010) (citing, e.g., *Harvey Aluminum (Inc.)*, 335 F.2d at 757).

Monetary sanctions are properly measured by the reasonable attorneys' fees and costs incurred as a result of the violation. *See, e.g., Lloyd*, 884 F.2d at 414 ("[T]he costs of the Motion were appropriately included in the sanction award."); *Evans v. Allied Barton Sec. Servs., LLP,* No. C-08-4993, 2010 U.S. Dist. LEXIS 121537, at *3 (N.D. Cal. Dec. 31, 2009) (J. Chesney) (awarding "costs and attorney's fees . . . incurred . . . by reason of [counsel's] sanctionable conduct").

Intervenor Defendants' counsel obviously answered paragraphs without an appropriate investigation – indeed while in possession of evidence demonstrating conclusively that its clients had sufficient information and knowledge to answer Plaintiffs' FAC with specific admissions or denials.

Notwithstanding Rule 11(d),[63] the "reasonable inquiry" standard applicable in Rule 11 determinations is also utilized in the context of discovery. "[A] party has an obligation to conduct a reasonable inquiry into the factual basis of his responses to discovery…." *A. Farber and Partners, Inc. v. Garber*, 234 F.R.D. 186, 189 (C.D. Cal. 2006) (citation omitted)*; see also*, Fed.R.Civ.P. 26(g)(1) (By signing a disclosure, discovery request, response, or objection, an attorney or party makes certain certifications after "reasonable inquiry"); Fed.R.Civ.P. 36(a)(4) (A party that asserts lack of knowledge or information in response to a request for admission must have "made reasonable inquiry"). Due to the "reasonable inquiry" standard in the discovery phase, Plaintiffs respectfully submit that Rule 11 sanctions at this juncture may likely forestall similar transgressions by Intervenor Defendants' counsel during the course of discovery, thereby preemptively avoiding additional delays and expenditures of judicial and party resources.

This Court may impose sanctions for general litigation conduct falling outside of the specific prohibitions of Rule 11 through the courts' inherent power. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991). The key to unlocking a court's inherent power is a finding of bad faith. *See In re Mroz*, 65 F.3d 1567, 1575 (11th Cir.1995). "A finding of bad faith is warranted where an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent. A party also demonstrates bad faith by delaying or disrupting the litigation or hampering enforcement of a court order." *Primus Automotive Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir.1997) (internal quotation and citation omitted).

If particularly egregious, the pursuit of a claim without reasonable inquiry into the underlying facts can be the basis for a finding of bad faith. *See Mroz*, 65 F.3d at 1576. In *Chambers*, the Supreme Court stated: "Because of their very potency, inherent powers must be exercised with restraint and discretion. ***A primary aspect of that discretion is the ability to***

[63] Fed.R.Civ.P. 11(d) states "This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37."

fashion an appropriate sanction for conduct which abuses the judicial process." 501 U.S. at 44-45 (internal citation omitted) (emphasis added).

As attorneys who unreasonably multiplied these proceedings, counsel for Intervenor Defendants should be held personally responsible for reimbursement of attorneys' fees and/or costs incurred as a result of that multiplication. *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1402 (9th Cir. 1994).[64]

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court: (1) declare that Counsel for Intervenor Defendants, are in violation of Rule 11 of the Federal Rules of Civil Procedure; (2) deem the following factual allegations in the FAC as admitted by Intervenor Defendants: Paragraphs 2, 3 (first sentence), 131 (first sentence), 132 (second sentence), 133, 134 (first sentence), 135, 136, 140, 141 (first and fourth sentences), 142, 143 (first sentence), 145 (second through fifth sentences), 150 (second sentence), 202 (second sentence), 205, 206 (first and third sentences), 208 (first sentence), 210 (third sentence), 211 (third sentence), 215, 216 (second sentence), 217 (first and second sentences), 224 (first sentence), 228 (first sentence), 230 (first clause of the second sentence), 231 (third sentence), 245 (first sentence), 246 (first three sentences), and 247 (first sentence); and (3) award reasonable attorneys' fees and costs incurred by Plaintiffs in unnecessarily addressing Intervenor Defendants' frivolous answer, in an amount to be determined by this Court. In the event the Court grants this motion, Plaintiffs will submit a separate request for attorneys' fees and costs associated with briefing this motion pursuant to Local Rule 54-3.

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[64] *See Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 66932, *16 n. 14 (S.D. Cal. Jan. 7, 2008), vacated in part by 2008 WL 636108 (S.D. Cal. Mar. 5, 2008) (sanctions may be imposed on local counsel and that the reasonableness of local counsel's reliance on other attorneys is dependent on the circumstances of the case); *see also Val-Land Farms, Inc. v. Third Nat. Bank in Knoxville*, 937 F.2d 1110 (6th Cir. 1991) (Rule 11 "does not provide a safe harbor for lawyers who rely on the representations of outside counsel" as counsel's obligations under the rule are nondelegable).

DATED this ____ day of March, 2017, at Eugene, Oregon.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Supporting Memorandum complies with the applicable word-count limitation under LR 7-2(b) because it contains 33 pages and 10,480 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

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